IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.   CRIMINAL NO. 2:20-00092

ANTOINE MILLER

MEMORANDUM OPINION AND ORDER

In Charleston, on February 15, 2023, came the defendant, Antoine Miller, in person and by counsel, Paul E. Stroebel; came the United States by Ryan Blackwell, Assistant United States Attorney; and came Senior United States Probation Officer Justin L. Gibson, for a hearing on the petition to revoke the defendant's term of supervised release.

The court informed the defendant of the alleged violations contained in the petition to revoke the term of supervised release, filed on February 2, 2023. The court advised the defendant that, pursuant to Rule 32.1(b) of the Federal Rules of Criminal Procedure, he has the right to a hearing and assistance of counsel before his term of supervised release could be revoked. Whereupon the defendant admitted that the government would be able to prove by a preponderance of the evidence the conduct alleged in the petition. Accordingly, based on defendant's concession, the court found the charges were established by a preponderance of the evidence.

The court found that the Guideline imprisonment range for the revocation of supervised release upon such grounds was six to

twelve months. The court further found that the Guideline ranges
issued by the Sentencing Commission with respect to revocation of
probation and supervised release are policy statements only and
are not binding on the court. Thus, the court stated that the
relevant statutory provision is 18 U.S.C. § 3583(e)(3), which
provides a maximum term of imprisonment of two years. Neither
party objected to the Guideline range and statutory penalty as
determined by the court.

The court found that there was sufficient information
before the court on which to sentence defendant without updating
the presentence investigation report.

After giving counsel for both parties and defendant an
opportunity to speak regarding the matter of disposition, the
court **ORDERED**, pursuant to the Sentencing Reform Act of 1984,
that the defendant's term of supervised release be revoked, and
that he be incarcerated for a period of twenty-four (24) months.
Upon completion of his term of incarceration, the defendant will
not be subject to any further supervision by the United States
Probation Office. Finally, the court reimposed the unpaid
$100.00 special assessment.

In considering the proper term of imprisonment to be
imposed, the court considered the factors set forth in 18 U.S.C.
§ 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5),
(a)(6), and (a)(7), as well as the Chapter 7 policy statements

and concluded that the sentence imposed is an appropriate sanction for the defendant's breach of trust, taking into account the nature and circumstances of the offense and the history and characteristics of the defendant. The court further concluded that the sentence imposed will provide adequate deterrence to criminal conduct and is necessary to protect the public from further crimes of the defendant.

The defendant was informed of his right to appeal the court's findings and the revocation of his supervised release. The defendant was further informed that in order to initiate such an appeal, a Notice of Appeal must be filed in this court within fourteen (14) days. The defendant was advised that if he wishes to appeal and cannot afford to hire counsel to represent him on appeal, the court will appoint counsel for him. The defendant was further advised that if he so requests, the Clerk of court will prepare and file a notice of appeal on his behalf.

The defendant was remanded to the custody of the United States Marshals Service.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record, the United States Marshal for the Southern District of West Virginia, and the Probation Department of this court.

IT IS SO ORDERED this 16th day of February, 2023.

ENTER:

David A. Faber
Senior United States District Judge

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